

STATE OF MICHIGAN
COURT OF APPEALS

P.E.A.C.E. INNOVATIVE PRODUCTS, INC.,
d/b/a POSITIVE IMAGE, LTD.,

UNPUBLISHED
September 16, 2004

Plaintiff/Counterdefendant-
Appellant,

V

CAREERWORKS, INC.,

No. 247901
Wayne Circuit Court
LC No. 01-111749-CK

Defendant/Counterplaintiff-
Appellee.

Before: Cavanagh, P.J., and Smolenski and Owens, JJ.

PER CURIAM.

Plaintiff/counterdefendant (“plaintiff”) appeals as of right an order denying its motion for summary disposition and granting defendant/counterplaintiff (“defendant”) summary disposition regarding defendant’s breach of contract counterclaims, pursuant to MCR 2.116(I)(2). We affirm in part and reverse in part.

On appeal, plaintiff first argues that the trial court erred in denying its motion for summary disposition regarding its breach of contract claims. We disagree.

A trial court’s ruling on a motion for summary disposition under MCR 2.116(C)(10) is reviewed de novo. *Quality Products & Concept Co v Nagel Productions, Inc*, 469 Mich 362, 369; 666 NW2d 251 (2003). When reviewing a motion for summary disposition under MCR 2.116(C)(10), a court reviews the submitted pleadings, affidavits, admissions, depositions, and documentary evidence in a light most favorable to the nonmoving party. *Stevenson v Reese*, 239 Mich App 513, 516; 609 NW2d 195 (2000). “The motion should be granted if the affidavits or other documentary evidence show that there is no genuine issue with respect to any material fact, and the moving party is entitled to judgment as a matter of law.” *Id*. The interpretation of a contract, including whether the language of a contract is ambiguous, is also a question of law we review de novo. *DaimlerChrysler Corp v G-Tech Professional Staffing, Inc*, 260 Mich App 183, 184-185; 678 NW2d 647 (2003).

Both plaintiff and defendant claim that the language of the contract is clear and unambiguous; however, they have two different interpretations regarding the compensation provisions of the contract. In determining whether a contract provision is ambiguous, the

language used is given its plain and ordinary meaning. *Rossow v Brentwood Farms Dev, Inc*, 251 Mich App 652, 658; 651 NW2d 458 (2002). Ambiguity exists if the words may reasonably be construed in different ways. *Universal Underwriters Ins Co v Kneeland*, 464 Mich 491, 496; 628 NW2d 491 (2001). “Absent an ambiguity or internal inconsistency, contractual interpretation begins and ends with the actual words of a written agreement.” *Id.* When a phrase is unambiguous and no reasonable person could differ with respect to its application, summary disposition is appropriate. *Rossow, supra* at 658.

Section 3.1 of the contract states that plaintiff will be paid as set forth in the program budget. The budget provides a unit cost per bus and a unit cost per meal; however, the number of participants in the program was merely an estimate. The estimated cost for food, transportation, and special services was \$1,369,900. This figure was calculated from an estimate of 750 participants per day, not the actual number of participants. Any ambiguity arising from the incorporation of the budget attachment is clarified by the remaining portion of section 3.1 and section 3.2, which clearly state that all payments, save the first payment, are contingent upon plaintiff submitting to defendant acceptable invoices with supporting documentation for all payments made and expenses incurred under the contract. Had plaintiff actually incurred expenses in the amount of \$1,369,900 and provided supporting documentation, it would have been compensated the entire amount allotted in the budget. However, because plaintiff only provided supporting documentation for \$611,000, it is only entitled to that amount under the contract.

Section 3.6 of the contract deals strictly with compensation in the event the grant from the state is reduced – if the grant were reduced, the budgeted amount for food, transportation, and special services would also be reduced. This section does not apply here because the grant was never reduced.

Plaintiff’s claim that the trial court failed to find that the contract was clear and unambiguous is without merit because the trial court did find the contract clear and unambiguous. The trial court also found that plaintiff’s argument contradicted the clear, unambiguous language of the contract. According to the plain language of the contract, plaintiff was entitled to \$375,000 for the first payment under the contract and any other payments that were supported by documentation up to \$1,369,900. Thus, the trial court did not err in denying plaintiff’s motion for summary disposition and granting defendant’s motion for summary disposition where defendant properly paid plaintiff according to the unambiguous terms of the contract.

Plaintiff next argues that the trial court erred in granting defendant’s motion for summary disposition regarding defendant’s counterclaims. We agree.

Plaintiff subcontracted with Safeway to conduct transportation services for the FIA summer program. Plaintiff then submitted invoices to defendant, seeking reimbursement for alleged charges from Safeway in the amount of approximately \$300,000. Defendant paid all invoices. Plaintiff, however, failed to pay Safeway, and Safeway filed suit against plaintiff seeking \$203,062 for services rendered. Safeway received a judgment against plaintiff in the amount of \$65,297.58. Furthermore, Safeway obtained a garnishment requiring defendant to pay any money owed to plaintiff directly to Safeway. Defendant now claims that because plaintiff was paid for expenses incurred by Safeway and because plaintiff failed to pay Safeway for the

expenses incurred, plaintiff was overpaid and must reimburse defendant for the Safeway expenses pursuant to the contract provision for reimbursement for overpayments.

The goal of contract construction is to determine and enforce the parties' intent from the plain language of the contract itself. *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000). The failure to define a contract term does not render the contract ambiguous. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). Rather, the terms of a contract must be interpreted in accordance with their commonly used meanings. *Id.* When appropriate, the court may refer to dictionary definitions to ascertain the precise meaning of a particular term. *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 262; 617 NW2d 777 (2000). The term "overpay" has been defined as, "to pay more than (an amount due)" or "to pay (a person) in excess." *Random House Webster's College Dictionary* (2001).

Here, defendant did not allege that plaintiff billed for expenses that it did not incur or that it paid it too much for services rendered, but rather, that plaintiff failed to make a payment to a subcontractor it was obligated to pay after receiving the payment from defendant. This situation does not fall under the definition of an "overpayment." Therefore, defendant was not entitled to seek reimbursement for the payments. Plaintiff's failure to pay Safeway was an entirely separate matter that should have been, and was, handled separately.

The trial court's order denying plaintiff's motion for summary disposition regarding its breach of contract claims is affirmed. The trial court's order granting defendant's motion for summary disposition regarding its counterclaim is reversed, and the matter is remanded to the lower court for entry of an order granting summary disposition to plaintiff. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Michael R. Smolenski
/s/ Donald S. Owens